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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,695	08/21/2001	Terrance D. Kending	AD6372 US CIP3	7120

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E I DU PONT DE NEMOURS AND COMPANY
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4417 LANCASTER PIKE
WILMINGTON, DE 19805

EXAMINER

BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 01/29/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/933,695

Applicant(s)

KENDING, TERRANCE D.

Examiner

Christopher P Bruenjes

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1772

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because the use of parenthesis and reference letters to describe the layers is confusing. The abstract would be clearer if the each layer had a definite name such as first heat shrinkable film solventless adhesive, and a second film. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitations referring to film of (a), (b), (c) or (d) is vague and indefinite. Referring to a reference letter as a layer is confusing the specific layer must be listed in each situation and the use of the reference letters removed. For

Art Unit: 1772

example in claim 1, it is suggested the last line read "a film having a heat shrinkage of at least 5% less than the heat shrinkable film".

Regarding claims 3 and 10, the limitation that the second film or (c) "has substantially no heat shrinkage" is vague and indefinite in light of the independent claim, which claims that the second film has heat shrinkage.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

Art Unit: 1772

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garland et al (USPN 5,079,051) in view of Aaker et al (USPN 4,971,845).

Garland et al teach a heat shrinkable film laminate used to package or contain a food in a tray, bag, or pouch (col.1, 11.6-20). The film comprises a heat shrinkable film, an adhesive coating, and a second film having heat shrinkage of at least 10% less shrinkage than the heat shrinkable film made of polyester (col.2, 11.55-65). The heat shrinkable film comprises a polymer made up of polyethylene terephthalate (col.9, 11.30-32). Another film is added comprising ethylene vinyl acetate, polyethylene, polypropylene, ionomer, acid copolymer (col.6, 11.36-45), ethylene vinyl alcohol (col.5, 11.10-20). Also a barrier layer of ethylene vinyl alcohol or saran, which is polyvinylidene chloride, is added adjacent to the heat shrinkable film (col.5, 11.6-15 and col.10, 11.55-60). Garland et al fail to explicitly teach using an adhesive made of polyurethane, which is solventless and elastomeric or that the biaxial orientation of the heat shrinkable film is between 5% and 55%. However, Aaker et al teach that an adhesive that will effectively secure a heat shrinkable film made up of

Art Unit: 1772

polyethylene terephthalate with a polyvinylidene chloride coating to a film made up of polypropylene or polyethylene is polyurethane (col.3, 11.44-46). Polyurethane is especially picked over other adhesives because it maintains the attachment at high temperatures so that the film can survive heat shrinking, as well as cooking if so desired, without damage (col.3, 11.47-55). It is obvious to one of ordinary skill in the art to set the biaxial orientation of the heat shrinkable film of Garland et al between 5% and 55%, because as defined by Garland et al "oriented" is defined as a material having a free shrink of at least 5% (col.7, 11.24-28). One of ordinary skill in the art would have recognized that a polyurethane adhesive, which is solventless and elastomeric, is used as the adhesive to bond a heat shrinkable film or barrier layer to a second film made up of polypropylene or polyethylene, in a heat shrinkable film laminate, in order for the adhesive to maintain the attachment at high temperatures so that the film can survive heat shrinking and cooking without damage, as taught by Aaker et al.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the applicant's invention was made to substitute polyurethane for the adhesive of Garland et al, in order for the adhesive to withstand high temperatures

Art Unit: 1772

during heat shrinking or cooking without damage to the bonding, as taught by Aaker et al.


Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yoshii et al (USPN 6,146,726); Tsukamoto et al (USPN 6,063,462).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P Bruenjes whose telephone number is 703-305-3440. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

1/22/03

Application/Control Number: 09/933,695

Page 7

Art Unit: 1772

Christopher P Bruenjes

Examiner

Art Unit 1772

CPB

January 14, 2003

A handwritten signature in black ink, appearing to read "Ch Bruenjes", with a stylized flourish at the end.